

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 361 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

URMILABEN MEHTA

Versus

COLLECTOR

Appearance:

M/S.VYAS ASSOCIATES for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
MR YS MANKAD for Respondent No. 2
MR PR NANAVATI for Respondent No. 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/04/99

ORAL JUDGEMENT

Rule. Heard Mr. Vyas for the petitioner, Mr. H.H. Patel for respondent State and Mr. Nanavati for respondent No.3 and Mr. Y.S. Mankad for respondent No. 2. With the consent of the parties the matter is taken up for final hearing.

The petitioner herein has challenged the order of

the Collector, Kutch-Bhuj passed in exercise of power under Section 258 of the Municipalities Act. The order is challenged mainly on the ground that the Collector could not have exercised his powers as Town Planning Scheme is made applicable to the city of Bhuj and secondly the Collector has given direction to the Gujarat Housing Board which also could not have been given by the Collector in exercise of the powers. Mr. Vyas has reiterated the same grounds made before the Collector. On the other hand Mr. Patel has tried to make out that illegal construction made is required to be stopped and therefore this order was passed. When pointedly asked, as to whether the Collector could have given the direction to the Gujarat Housing Board, Mr. Patel could not assertively say yes. Mr. Nanavati has urged that the matter may be remanded to the Collector for passing appropriate orders.

Considering the rival contention at the outset it may be noted that the order of the Collector could have been challenged by the petitioner under Section 264 of the Municipalities Act which has not been done by the petitioner. Further there is a factual dispute regarding nature of permission, construction etc. and keeping in this light the Collector has given direction to the Gujarat Housing Board for taking appropriate action which the Collector could not have given while exercising power under Section 258 of the Municipalities Act. Under the circumstances, the order of the Collector cannot be sustained. The petition deserves to be allowed. The order of the Collector impugned in this petition is quashed and set aside. Rule made absolute. No costs.

It is clarified that it would be open for the competent authority to take appropriate action against the construction if according to the authority the construction is not in accordance with the rules and this order will not come way in taking such action.

(A.L. DAVE, J)

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